

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00168/2020

Date of Order: This, the 28th day of August 2020

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)



Sri Ajit Thakuria
S/o Late Nibaran Thakuria
R/O Kochpara, Mirza, Guwahati-
781125, in the district of Kamrup
(Rural) and presently engaged as
Senior Engineering Assistant
AIR, LPT, Jalukbari, Guwahati.

...Applicant

By Advocates: Sri A. Singh Deka & Sri M. Alam

-Versus-

1. Director General
All India Radio
Prasar Bharati House
Copernicus Marg, New Delhi – 110001.
2. Asst. Director General (E)
NEZ, AIR & DD, Doordarshan Complex
R.G.B. Road, All India Radio
Guwahati-24, Kamrup (M), Assam.
3. Sri Bablu Banik
Sr. Administrative Officer
For Dy. Director General (E)/HOO
AIR, Chandmari, Guwahati – 3
Kamrup (M), Assam.

...Respondents.

By Advocate: Sri R. Hazarika, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, MEMBER (J)

This matter has been taken up through video conferencing.

2. This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-



“8.a That the orders dated 11.11.2019, 25.06.2020 and 11.08.2020 transferring and releasing the services of the applicant as Senior Engineering Assistant at Haflong is a bad precedent in as much as the Applicant is attending superannuation in 2022 and as such the resultant orders issued are an abuse of the process of law;

8.b That the aforesaid arbitrary and impugned orders dated 11.11.2019, 25.06.2020 and 11.08.2020 are prima facie illegal, arbitrary, inhuman, perverse and an abuse of the process of law in as much as the same has been issued without any valid reason and as such the orders are liable to be set aside, reversed and quashed by allowing the applicant to continue his service as earlier.”

3. Sri A. Singh Deka, learned counsel for the applicant submits that in the year 1989, applicant was initially appointed as Engineering Assistant at LPT, Kokrajhar under All India Radio. Since then, he has been rendering his services for more than 32 years without any. He was promoted to the post of Senior Engineering Assistant on 21.07.1993. He is currently posted at AIR,

Guwahati in the same capacity as Senior Engineering Assistant. He has only 02 years of service left and is attaining superannuation in 2022. According to the learned counsel, son of the applicant had undergone surgery for Thyroid Gland Cancer on 03.07.2020 at Excel Care Hospitals, Guwahati and he is under medical treatment.



4. Learned counsel for the applicant submits that on 11.11.2019, the applicant was served with an order transferring him from AIR, Guwahati to AIR, Haflong. After being received the said order, immediately, the applicant made a representation dated 12.11.2019 before the respondent authority for stay of the said transfer order on the ground that he has left only 02 years of service. According to the learned counsel for the applicant, the applicant did not act on the aforesaid transfer order dated 11.11.2019 for some months and applicant continued to serve at Guwahati in the same capacity as earlier. The respondent authorities neither stayed the earlier transfer order nor disposed of the representation made by the applicant. Suddenly, the applicant came across with an order dated 25.06.2020 by which the respondent authorities

directed the AIR, Guwahati to relieve all the employees enlisted in earlier transfer order dated 11.11.2019 immediately within a period of 15 days. The applicant immediately submitted another representation dated 13.07.2020 before the respondent authority to stay his transfer to Haflong due to his personal difficulties. The respondent authorities without heeding on the pending representations, issued an order on 11.08.2020 directing the applicant to join in his service at Haflong within 31.08.2020.



5. Sri R. Hazarika, learned Addl. CGSC appearing for the respondent Nos. 1 & 2 submits that the said impugned orders dated 11.11.2019 and 25.06.2020 are issued with due approval of competent authority. He further submits that he has no objection if a direction is issued to the respondents to dispose of the pending representations within a time frame.

6. I have heard the learned counsel for the parties. Perused the pleadings and the documents relied upon. No doubt, the department is the best suited to judge as to the existence of exigencies of such transfer who should be transferred where. Same time, it should not be given by that the power of judicial review could very

well be exercised by a court of law if such transfer indicated hardship factor in compliance with such a transfer order. Moreover, it is the policy of the Govt. of India that in case of an officer due to superannuation, posting to station of choice shall be given due weightage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with her family, acquire a house if not already done and to make necessary arrangement for her superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12**, Hon'ble Gauhati High Court has held that – “Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary.”



7. In the present case, I have noted that the applicant will retire in December 2022. Only about 02 years and 04 months of service left. In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No.**

239/1999 rendered in **(2000) 1 GLR 519**, the Hon'ble Gauhati High Court of Agartala Bench has held that –
 “The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months”.



I find that the present case is squarely covered with the above case of **Narayan Choudhury Vs. State of Tripura** (supra).

8. I have also perused the Transfer Policy No. 310/78/75-B(D)(Vol.II) dated 14.07.1981 of Government of India, Ministry of Information & Broadcasting where at para (xxi), it is stated that – *“Members of staff who are within three years of reaching the age of superannuation will, if posted at their home town, not be shifted there from.”*

9. By taking into consideration the entire conspectus of the case as well as ratio laid down by the Hon'ble Gauhati High Court mentioned above and the transfer policy of the Govt., I direct the respondent authority to allow the applicant to continue in his

present place at AIR, Guwahati till his date of retirement. Consequently, the impugned transfer orders No. ADG(E)(NEZ)/1(27)/SEA/2018-19-S/3112 dated 11.11.2019, ADG(E)(NEZ)/Staff/2019-20 dated 25.06.2020, **in respect of the applicant**, as well as office order No. AIR/GUW/1(18)/2019-20-S/EC dated 11.08.2020 are hereby quashed and set aside.



10. With the above observations and directions, O.A. stands disposed of accordingly, at the admission stage. No order as to costs.

(MANJULA DAS)
MEMBER (J)

PB